

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98754 / October 16, 2023

Admin. Proc. File No. 3-21211

In the Matter of
RICHARD GREGORY TILFORD

SECOND ORDER DIRECTING RESPONDENT TO SHOW CAUSE

On October 19, 2022, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Richard Gregory Tilford pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ After Tilford failed to file an answer to the OIP,² the Commission ordered Tilford to show cause by August 7, 2023, why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file an answer and to otherwise defend this proceeding.³

On August 8, 2023, the Office of the Secretary received a Notice of Appearance and Request for Delay from attorney Jeffrey King, in which he stated that he had been retained to represent Tilford in this matter and requested a 30-day extension of time to respond to the order to show cause. This submission was not electronically filed, failed to certify inability to file electronically, and did not include a certificate of service as required by our Rules of Practice.⁴

¹ *Richard Gregory Tilford*, Exchange Act Release No. 96103, 2022 WL 13564463 (Oct. 19, 2022).

² *See Richard Gregory Tilford*, Exchange Act Release No. 97024, 2023 WL 2351450, at *1 (Mar. 2, 2023) (responding to correspondence from Tilford and requiring him to file his answer by April 17, 2023).

³ *Richard Gregory Tilford*, Exchange Act Release No. 97790, 2023 WL 4156191, at *1 (June 23, 2023).

⁴ *See* Rule of Practice 152(a), 17 C.F.R. § 201.152(a) (requiring electronic filing of documents unless a person files a certification that they “cannot comply” with these requirements “due to a lack of access to electronic transmission devices”); Rule of Practice 151(d), 17 C.F.R. § 201.151(d) (requiring that papers filed with the Commission be accompanied by a certificate of service and identifying its contents).

On August 18, 2023, we directed Tilford to file a certificate of service as to the Notice of Appearance and Request for Delay by August 25, 2023.⁵ Neither Tilford nor King has filed a certificate of service or otherwise responded to the Commission's order. And although it has been more than 30 days since King requested a 30-day extension of time for Tilford to respond to the order to show cause, neither Tilford nor King has responded to that show cause order.

Nonetheless, because of the circumstances, including Tilford's incarcerated status and his apparent attempt to retain an attorney and participate in this proceeding, we find it appropriate to again direct Tilford to respond to the allegations in the OIP and to otherwise defend himself in this proceeding. If Tilford wishes to have this case proceed with him as a participant, he must therefore make a responsive filing by the deadline below, which includes filing a proposed answer to the charges in the OIP. The parties are advised that any settlement discussions in which they might be engaged do not automatically toll deadlines in this proceeding. Instead, a party may request that the Commission extend or stay deadlines based on settlement discussions, which Tilford has not done.⁶

Accordingly, Tilford is ORDERED to SHOW CAUSE by November 30, 2023, why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file an answer and to otherwise defend this proceeding. Tilford's submission shall address the reason for his failure to timely file an answer and include a proposed answer to be accepted in the event that the Commission does not enter a default against him. If Tilford is no longer represented by counsel, he shall deliver any response, including any answer, to the proper prison authorities no later than the due date, for forwarding to the Commission's Office of the Secretary, and serve a copy of the response by mailing it to counsel for the Division of Enforcement or through other means identified below.⁷

When a party defaults, the allegations in the OIP will be deemed to be true and the Commission may determine the proceeding against that party upon consideration of the record

⁵ *Richard Gregory Tilford*, Exchange Act Release No. 98167, 2023 WL 5332367, at *1 (Aug. 18, 2023).

⁶ *Cf. Water Now, Inc.*, Exchange Act Release No. 96648, 2023 WL 173351, at *1 (Jan. 12, 2023) (granting extension of time based on Division's representation that respondent had retained counsel and was now engaged in settlement discussions); *Thomas Garnette Martin, Jr.*, Advisers Act Release No. 6375, 2023 WL 5203103, at *1 (Aug. 14, 2023) (granting "motion to stay proceedings pending Commission consideration of an offer of settlement," applying standards similar to those found in Rule of Practice 161(c)(2), 17 C.F.R. § 201.161(c)(2)).

⁷ *See Houston v. Lack*, 487 U.S. 266, 276 (1988) (holding that, under federal prison mailbox rule, pro se prisoners' notices of appeal are "filed" at moment of delivery to prison authorities for forwarding to the district court); *Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) (per curiam) (noting that this "mailbox rule [applies] to other filings by pro se prisoners").

without holding a public hearing.⁸ The OIP, and our prior order to show cause, informed Tilford that a failure to file an answer could result in him being deemed in default and the proceedings determined against him.⁹

If Tilford files a response to this second order to show cause, the Division may file a reply within 28 days after its service. If Tilford does not file a response, the Division shall file a motion for entry of an order of default and the imposition of remedial sanctions by December 28, 2023. Given the circumstances in this proceeding, the Division shall serve its motion for sanctions on both Tilford personally and the attorney who appeared on his behalf.¹⁰ The motion for sanctions should address each statutory element of the relevant provisions of Section 15(b) of the Exchange Act.¹¹ The motion should discuss relevant authority relating to the legal basis for, and the appropriateness of, the requested sanctions and include evidentiary support sufficient to make an individualized assessment of whether those sanctions are in the public interest.¹²

⁸ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁹ *Tilford*, 2022 WL 13564463, at *2 (OIP); *Tilford*, 2023 WL 4156191, at *1 (prior order to show cause).

¹⁰ *Cf.* Rule of Practice 150(b), 17 C.F.R. § 201.150(b) (providing that typically service of papers is made on a represented person’s attorney who has filed an appearance, “*unless* service upon the person represented is ordered by the Commission” (emphasis added)).

¹¹ *See generally Rapoport v. SEC*, 682 F.3d 98, 108 (D.C. Cir. 2012) (requiring “meaningful explanation for imposing sanctions”); *McCarthy v. SEC*, 406 F.3d 179, 190 (2d Cir. 2005) (stating that “each case must be considered on its own facts”); *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014) (requiring explanation of “why the facts and circumstances of this case warrant the [sanctions] imposed”), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016); *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *3 (Apr. 23, 2015) (remanding for development of additional evidence to “determine whether [the respondent] was acting as a broker or dealer at the time of his misconduct”).

¹² *See, e.g., Shawn K. Dicken*, Exchange Act Release No. 89526, 2020 WL 4678066, at *2 (Aug. 12, 2020) (requesting additional information from the Division “regarding the factual predicate for [the respondent’s] convictions” and “why these facts establish” the need for remedial sanctions); *see also Shawn K. Dicken*, Exchange Act Release No. 90215, 2020 WL 6117716, at *1 (Oct. 16, 2020) (clarifying the additional information requested from the Division). In addition, whether preclusive effect will be given to findings made in an underlying case will vary depending on the circumstances giving rise to the prior order or judgment. *See, e.g., McDuff*, 2015 WL 1873119, at *1, *3 (general jury verdict of guilty); *Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 WL 421305, at *3-4 (Feb. 4, 2010) (injunction entered following default), *appeal after remand*, Exchange Act Release No. 63720, 2011 WL 121451, at *5-8 (Jan. 14, 2011); *cf. Reginald Buddy Ringgold, III*, Advisers Act Release No. 6267, 2023 WL 2705591, at *3 (Mar. 29, 2023) (default judgment entered as sanction for litigation misconduct).

The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.¹³ Tilford's opposition should address the reasons for his failure to timely file an answer and also address the substance of the Division's motion for sanctions. The failure to timely oppose the Division's motion is itself a basis for a finding of default;¹⁴ it may result in the determination of particular claims, or the proceeding as a whole, against Tilford, and Tilford may be deemed a forfeiture of arguments that could have been raised at that time.¹⁵

The parties' attention is directed to the e-filing requirements in the Commission's Rules of Practice.¹⁶ If Tilford is no longer represented by counsel, Tilford may serve and file documents by sending them through alternative methods specified in the Commission's Rules of Practice, including through the U.S. Postal Service by first class, certified, registered, or express mail delivery.¹⁷ Tilford is again reminded that he must serve the Division with a copy of any document that he files with the Commission,¹⁸ and he must include a certificate of service with each document that he files.¹⁹

¹³ See Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160.

¹⁴ See Rules of Practice 155(a)(2), 180(c), 17 C.F.R. §§ 201.155(a)(2), .180(c); *see, e.g., Behnam Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at *3 n.12 (Jan. 3, 2017).

¹⁵ *See, e.g., McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at *3-5 (Sep. 29, 2017); *Bennett Grp. Fin. Servs., LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at *2-3 (Mar. 30, 2017), *abrogated in part on other grounds by Lucia v. SEC*, 138 S. Ct. 2044 (2018); *Apollo Publ'n Corp.*, Securities Act Release No. 8678, 2006 WL 985307, at *1 n.6 (Apr. 13, 2006).

¹⁶ *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,465-81 (Dec. 30, 2020), <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations such as a redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465-81. And the amendments provide further requirements if a person cannot reasonably comply with the electronic filing requirements due to lack of access to electronic transmission devices. *Id.* at 86,478-79.

¹⁷ *Tilford*, 2023 WL 2351450, at *1; *see also* Rules of Practice 150(d), 152(a)(2), 17 C.F.R. §§ 201.150(d), .152(a)(2) (providing additional service and filing methods).

¹⁸ Rule of Practice 150(a), 17 C.F.R. § 201.150(a). The Division of Enforcement is represented by Matthew Gulde, Fort Worth Regional Office, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, TX 76102, guldem@sec.gov.

¹⁹ Rule of Practice 151(d), 17 C.F.R. § 201.151(d). A certificate of service "stat[es] the name of the person or persons served, the date of service, the method of service, and the mailing address or email address to which service was made, if not made in person." *Id.*

Upon review of the filings in response to this order, the Commission will either direct further proceedings by subsequent order or issue a final opinion and order resolving the matter.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary